neither the promisor nor the promisee can build on the promisor's land; if there is an easement for lateral support, neither the owner of the servient nor the owner of the dominant tenement can excavate on the servient. But the right is not destroyed; it is merely divided, since either can act with the other's consent. The benefit of such a covenant passes to the purchaser of the covenantee's land whether he knew of the covenant or not,[4] and the covenantor is free from all liability as soon as he conveys away his land.[5] The land is bound in the hands of subsequent grantees, underlessees,[6] or mere occupiers,[7] with notice; or even, it is believed, in the hands of one who has acquired the title by adverse possession.[8] Moreover, such agreements have been held to create interests in land within the statute of frauds.[9] The fineness of the distinction between these rights and negative easements is further indicated by the fact that a covenant not to obstruct lights will create a legal easement,[10] while a covenant not to build beyond a certain line will not.

The question whether the right created by a restrictive agreement is a property right, was presented in a recent case of eminent domain proceedings, in which the court refused to allow the owner of such a right compensation, on the ground that he had no common law easement. *Wharton* v. *United States*, 153 Fed. 876 (C. C. A., First Circ.). Even if these rights are not true common law easements, practically the only distinction, as we have seen, is that they are enforceable only in equity, and consequently can be extinguished by a sale to a *bona fide* purchaser. Therefore, at the present time, when the differences between law and equity have been so greatly diminished, and when the registry acts give constructive notice, there seems to be no valid reason why such rights should not be held property rights, equitable rights only, to be sure, but still property. At all events, when land subject to restrictive agreements is taken by eminent domain, in justice, and on analogy to cases of inchoate dower,[11] it seems clear that the government should pay the owner of the quasi-servient estate its value when discharged of the easement, and that he, in turn, should account to the owner of the quasi-dominant for a just share of the compensation received. For the same reasons it follows that if the owner sells the land to a *bona fide* purchaser he should account for a share of the proceeds, since he has received the full value of the land unencumbered, and has destroyed at least an equitable property right.

RECENT CASES.

ATTORNEYS — DUTIES ATTACHED TO THE OFFICE — ORDER TO PAY UNENFORCEABLE OBLIGATION. — A solicitor wrote to his client's former solicitors that the client had placed in his hands the full amount of their bill, so that he

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[4] See Rogers *v.* Hosegood, [1900] 2 Ch. 388, 406.
[5] Hall *v.* Ewin, 37 Ch. D. 74.
[6] Johns Bros. *v.* Holmes, [1900] 1 Ch. 188.
[7] Mander *v.* Falke, [1891] 2 Ch. 554.
[8] *Re* Nisbet and Potts Contract, [1906] 1 Ch. 386.
[9] Wolfe *v.* Frost, 4 Sandf. Ch. (N. Y.) 72; Rice *v.* Roberts, 24 Wis. 461. The cases seemingly opposed are based on principles of fraud or estoppel. See Lennig *v.* Ocean City Ass'n, 41 N. J. Eq. 606, 609.
[10] Ladd *v.* Boston, 151 Mass. 585.
[11] Moore *v.* City of New York, 8 N. Y. 110; Wheeler *v.* Kirtland, 27 N. J. Eq. 534.

would be in a position to pay them. Relying on this statement, they forbore proceedings to enforce payment. *Held*, that the solicitor has no defense to summary process for payment of the bill. *In re A Solicitor*, [1907] 2 K. B. 539.

The court took the position that whether or not the transaction created any legal or equitable right is immaterial; since the solicitor gave his word to pay, the court will compel him to do so. It is general law in this country that the remedy by summary proceeding lies only on the application of a client against his attorney. *Hess* v. *Joseph*, 7 Rob. (N. Y.) 609. It is also held that the latter may plead whatever defense he would have to an action. *Jones* v. *Miller*, 1 Swan (Tenn.) 151. A different view, however, prevails in England. The applicant need not be the solicitor's client. *In re Gee*, 2 D. & L. 997. Nor can the solicitor plead certain technical defenses, such as the statutes of frauds or of limitations. *In re Hilliard*, 2 D. & L. 919; *Ex parte Sharpe*, 5 Dowl. P. C. 717. This view is based on the theory that the process is to secure honorable conduct on the part of officers of the court when acting in that capacity, and that the legal validity of the undertaking is solely a secondary consideration. *Ex parte Bentley*, 2 Deac. & C. 578. The English doctrine seems better on principle, since the proceeding is primarily for the punishment of the attorney rather than for the relief of the client.

BANKRUPTCY — PREFERENCES — RETURN OF MISAPPROPRIATED FUNDS THROUGH MISAPPROPRIATING AGENT. — The president of a bankrupt corporation, just before failure, repaid to himself as agent of the defendant company money which he had secretly misappropriated for the use of the bankrupt corporation. Under § 60 of the Bankruptcy Act of 1898, if a preference is given and "the person receiving it . . . or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference," the trustee may recover the property. *Held*, that the trustee in bankruptcy cannot recover. *McNaboe* v. *Columbian Manufacturing Company*, 153 Fed. 967 (C. C. A., Second Circ.).

The general rule is that the knowledge of the agent is the constructive knowledge of the principal. *Wright* v. *Cotten*, 140 N. C. 1. But if the agent acts fraudulently toward his principal for his own benefit, the doctrine of constructive knowledge does not apply. *In re Marseilles, etc., Co.*, L. R. 7 Ch. 161; *De Kay* v. *Hackensack Water Co.*, 38 N. J. Eq. 158. Many courts say that in such cases there is a presumption that the agent will not communicate with the principal; but the true ground is that the agent is acting beyond the scope of his authority. *Allen* v. *South Boston Ry. Co.*, 150 Mass. 200; *contra*, *Frenkel* v. *Hudson*, 82 Ala. 158. In the present case, therefore, if the agent was acting beyond the scope of his authority he ceased to represent the defendant in the transaction, and the words in the Bankruptcy Act, "or by his agent acting therein," cannot as a matter of law make the defendant liable for his knowledge acquired in such transaction. It might be arguable that while the defaulter was not the defendant's agent to misappropriate the funds, he was its agent to collect the resulting debt of the bankrupt company, but the court seems correct in treating it as virtually one secret fraudulent transaction. *Lindsey* v. *Lambert Building Ass'n*, 4 Fed. 48.

BANKRUPTCY — PREFERENCES — RETURN OF PAYMENT TO DEBTOR PAYING IN IGNORANCE OF SET-OFF. — Bank A, shortly before bankruptcy, fraudulently appropriated the proceeds of a note it collected for bank B. Bank B, not knowing of the appropriation, collected a draft, as agent for A, and forwarded the proceeds, which were received by the assignee in bankruptcy. It appeared that the day before going into bankruptcy the partners composing bank A had declared that B "owes us as much as we do them. That is a stand-off." *Held*, that B may recover back enough of the fund forwarded to satisfy its claim. *In re Northrup*, 152 Fed. 763 (Dist. Ct., N. D. N. Y.).

If the conversation between the partners is interpreted as setting aside A's claim against B in trust for B, it would seem to create a preference. It is true that B, if sued, could set off its claim against A, under § 68 of the Bankruptcy Act of 1898 providing for the set-off of mutual debts and mutual credits. See